

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
(CENTRAL DIVISION)**

**MICHAEL DAWE,
Plaintiff**

v.

**CAPITAL ONE BANK,
Defendant.**

C.A. No. 04-40192

**CAPITAL ONE BANK'S MOTION FOR LEAVE TO FILE
BRIEF REPLY TO PLAINTIFF'S OPPOSITION TO MOTION TO COMPEL
ANSWERS TO INTERROGATORIES AND PRODUCTION OF DOCUMENTS**

Defendant Capital One Bank (“Capital One”) moves pursuant to Local Rule 7.1(B)(3) for leave to file a brief reply to Plaintiff’s Memorandum in Opposition to Defendant’s Motion to Compel.

In support of this motion, Capital One states that the plaintiff’s memorandum (a) mischaracterizes the fundamental issues in this case, as evidenced by, among other things, plaintiff’s erroneous contention that the plaintiff’s debt was litigated in the state court action and his erroneous statement in his memorandum that Capital One’s “stated intention is to re-litigate the validity of the alleged debt;” (b) is misleading insofar as it suggests that the plaintiff has been stymied in his efforts to learn the basis for Capital One’s defense to the allegations in the complaint, which was disclosed at the scheduling conference, in correspondence to plaintiff’s counsel, and in Capital One’s motion to compel answers to interrogatories and production of documents; (c) relies upon case law that has no application in this case; and (d) misconstrues his obligations under the Federal Rules of Civil Procedure to provide pre-trial discovery.

Accordingly, a brief reply to the plaintiff’s memorandum in opposition to Capital One’s motion to compel will assist the Court in narrowing the remaining issues and resolving this

dispute, particularly in light of the fact that the plaintiff has asserted the same objections to other requests for discovery that are not yet before the Court.

Respectfully submitted,

CAPITAL ONE BANK

By its attorney,

/s/ Bruce D. Berns

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